

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V



DATE: MAR 26 1991

SUBJECT: U.S.S. Lead-East Chicago, Indiana CWA Civil Action

FROM: Joseph M. Boyle, Chief  
IL/IN Technical Enforcement Section  
RCRA Enforcement Branch

TO: Michael Mikulka, Chief  
Compliance Section  
Water Division

We have evaluated the proposed plan to construct a sedimentation pond at U.S.S. Lead Refinery, Inc. (USS) facility developed for USS by Resource Consultants (RC) of Brentwood, Tennessee. As requested in your March 13, 1991, memorandum our evaluation identified relevant regulatory or statutory requirements of RCRA which could affect the construction of the sedimentation pond. The review includes information from the following documents: RC's Site Assessment Plan and Sedimentation Pond Design Summary (U.S.S. Lead Refinery, Inc., East Chicago, Indiana, Project No. 1-3214.00, August 3, 1990) and the Partial Interim Agreed Order in Cause No. N-296, Indiana Department of Environmental Management v. U.S.S. Lead Refinery, Inc..

While we endorse the concept of a sediment trap to keep lead-contaminated sediment from entering the Grand Calumet River, we are concerned that either the influent to, or the settled sediments in, the trap may be sufficiently rich in lead to exhibit the toxicity characteristic for hazardous waste. If so, USS could not begin to construct the proposed design for the pond without first obtaining a RCRA permit from the Indiana Department of Environmental Management.

Our review is based on the assumptions that (a) the surface impoundment will be used to treat, store, or dispose of hazardous waste, as defined in 40 CFR 261 and (b) the surface impoundment is a new hazardous waste management unit. Furthermore, the review is also premised on the assumption that the sedimentation pond does not meet the definition of a wastewater treatment unit as defined in 40 CFR

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260.10. If the sedimentation pond is part of a wastewater treatment facility, as defined in 40 CFR 260.10, and meets the definition of a tank or tank system as defined in 40 CFR 260.10, the owner or operator of the wastewater treatment unit is not required to obtain a RCRA permit (40 CFR 270.10).

Based on our review, we have determined that the sedimentation pond, as described in RC's Sedimentation Pond Design Summary, does not meet all applicable regulatory requirements for hazardous waste surface impoundments specified in 40 CFR 264 Subpart K or 265 Subpart K. We believe that the design of the surface impound will allow hazardous constituents to enter the ground water or surface water from the unit.

40 CFR 264 and 265 Subpart K state that the owner or operator of a surface impoundment must install two or more liners and a leachate collection system in accordance with 264.221(c) or 265.221(c). 40 CFR 264.221(c) or 265.221(c) allows the owner or operator to demonstrate to the Regional Administrator that an alternative design and operating practice, together with location characteristics, will prevent the migration of any hazardous waste constituents into the ground water or surface water at least as effectively as such liners and leachate collection system. RC's proposed design would not provide such an alternative.

A device to settle out contaminated sediments from precipitation run off is certainly appropriate. From a regulatory perspective under RCRA, a tank would be preferable to a surface impoundment.

If you have any further questions about this issue, please contact Thad Slaughter at 6-4460.

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